

**THE UNITED STATES BANKRUPTCY COURT FOR THE
DISTRICT OF NEBRASKA**

In Re:

PLANET MERCHANT PROCESSING, INC.,

Debtor.

Case No. 16-81243

(Chapter 11)

EVO MERCHANT SERVICES, LLC (f/k/a
MERCHANT SERVICES, INC.),

Plaintiff,

Adv. No. 16-8041 TLS

v.

PLANET MERCHANT PROCESSING, INC.,
Chapter 11 Debtor, and PLANET GROUP,
INC., and WEST PARTNERS, LLC, and
DENNIS M. O'BRIEN,

Defendants.

**PLAINTIFF'S MOTION TO DISMISS
ADVERSARY PROCEEDING**

Plaintiff, EVO Merchant Services, LLC (f/k/a Merchant Services, Inc.) ("EVO"), moves this Court for an order dismissing this adversary proceeding without prejudice and ordering that all parties bear their own costs and expenses (this "Motion"). EVO brings this Motion pursuant to Federal Rule of Civil Procedure 41(a)(2), made applicable to this proceeding pursuant to Federal Rule of Bankruptcy Procedure 7041(a)(2).

As this Court is aware, EVO initiated this adversary proceeding in large part seeking injunctive relief against Planet Merchant Processing, Inc. (the "Debtor") and several non-debtor defendants, including Planet Group, Inc. (the "Parent").¹ EVO sought a temporary restraining order and preliminary injunction compelling the Debtor to continue to perform its contractual obligations to provide services and support of a software license to EVO (the "Agreement") and

ordering the non-debtor defendants, including the Parent, to refrain from committing any act that would impede the Debtor's ability to perform its obligations under the Agreement. Throughout the course of the litigation, in both the Debtor's bankruptcy case and this adversary proceeding, it became clear that the Debtor was not going to perform its obligations under the Agreement. Ultimately, the Court concluded that it could not compel such performance from the Debtor. EVO reluctantly withdrew its opposition to the Debtor's motion to reject the Agreement filed in the bankruptcy case, and the Agreement has since been rejected.

Notwithstanding the disruption, cost, and expense that the Debtor's behavior has caused EVO, EVO has managed to continue its operations without any assistance from the Debtor and intends to continue to do so. Apart from its continued use of intellectual property (as permitted and required under 11 U.S.C. § 365(n)(1)(B) and (3)) and its upcoming filing of a proof of claim for rejection damages and for any other claims it has against the Debtor, EVO intends to have no further relationship with the Debtor; provided, however, EVO expects the Debtor to continue to honor and perform its obligations under 11 U.S.C. § 365(n)(3).

Plaintiff is serving this motion on all remaining parties to this adversary proceeding, and there is no other claim pending in this adversary proceeding by another party. Accordingly, EVO requests, pursuant to Federal Rule of Civil Procedure 41(a)(2), made applicable to this proceeding pursuant to Federal Rule of Bankruptcy Procedure 7041(a)(2). and Local Rule 9013-1 Appendix A, 13, that this Court dismiss this adversary proceeding without prejudice and order all parties to bear their own costs and expenses, including legal fees.

¹ Other than the Parent, all of the non-debtor defendants have all been dismissed from this case.

Dated: November 4, 2016

Respectfully submitted,

Plaintiff, EVO Merchant Services, LLC,

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CERTIFICATE OF SERVICE

I hereby certify that on November 4, 2016, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which sent notification of said filing to all CM/ECF participants, including the following:

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